

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**GE HEALTHCARE, a unit of
General Electric Company,**

Plaintiff,

v.

Case No. 09-C-0035

ORBOTECH, LTD.,

Defendant.

DECISION AND ORDER

Presently before the Court is GE Healthcare's ("GE") motion to strike evidence (Docket No. 55). Specifically, GE requests that this Court strike several exhibits attached to the Declaration of David Z. Ribakoff (the "Declaration"), that were submitted with Orbotech, Ltd.'s ("Orbotech") reply brief in support of its motion to dismiss.

What GE characterizes as a "motion to strike" is in fact an articulation of reasons why GE contends the Court should not take judicial notice of specific exhibits attached to the Declaration. GE asserts that the exhibits describe a separate United Kingdom entity and not the Plaintiff.

The correct identity of the proper Plaintiff(s) is a central issue raised by Orbotech's motion. As the party asserting that the Court has subject matter jurisdiction, GE

bears the burden of proof on the issue. *See United Phosphorus, Ltd. v. Angus Chem. Co.*, 322 F.3d 943, 946 (7th Cir. 2003). Even if the Court was inclined to strike the evidence, that determination would not resolve the issue of whether subject matter jurisdiction exists. Therefore, without resolving the judicial notice issue as to the challenged documents proffered by the Declaration, the Court denies GE's motion to strike, but will permit GE to file a brief, along with supporting documentation, responding to the subject matter jurisdiction arguments and supporting documents first brought to this Court's attention by Orbotech's reply brief and related submissions. Orbotech will be permitted to file a reply to that response.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

1. GE's Motion to Strike Evidence (Docket No. 55) is **DENIED**.
2. GE **MAY** file a brief, along with supporting documents, by **April 15, 2009**, addressing the subject matter jurisdiction arguments and documents first raised by Orbotech in its reply brief in support of its motion to dismiss.
3. Orbotech may file a reply thereto by **April 22, 2009**.

Dated at Milwaukee, Wisconsin this 31st day of March, 2009.

BY THE COURT

s/ Rudolph T. Randa
Hon. Rudolph T. Randa
Chief Judge